

**Minutes of the
Davie County Board of Adjustment
November 15, 2010
Regular Meeting**

Members Present

Wayne Webb
J.T. Smith
Jack Jerome
Daphne Frye
Norman Carter

Members Absent

Tim Latham
Michael Beck

Others Attending

Andrew Meadwell
Amy Litz
Holly Groce, County Attorney
Lorri Hayes

CALL TO ORDER

Chairman Webb called the meeting to order. He welcomed those attending, introduced the Board members and staff. Explains purpose and procedure of the Board of Adjustment.

ADOPT AGENDA

Mr. Carter made a motion to adopt the agenda as written. **Mr. Jerome** seconded the motion. The Board voted five (5) in favor and none opposed to adopt the agenda.

APPROVAL OF MINUTES-October 18, 2010

The minutes from the **October 18, 2010** meeting were reviewed.

Mr. Jerome made a motion to approve the minutes as written. **Mr. Carter** seconded the motion. The Board voted five (5) in favor and none opposed to approve the minutes as written.

RECOGNITIONS/PROCLAMATIONS- None

ITEMS BEFORE THE BOARD OF ADJUSTMENT-continued hearing from October 18, 2010

Jesse M. Gentry Jr. has appealed a decision by the Zoning Enforcement Officer pursuant to §155.263 of the Davie County Zoning Ordinance. The subject use/property is located at 2992 NC Hwy 801 North, Mocksville, NC 27028 and is further described as Parcel of the Davie County Tax Map C400000062.

Mr. Webb This is a continuation of the meeting on October. This is most commonly known as Farmington Drag Strip. Mr. Meadwell, attorney Ed Powell and Mr. Gentry were already sworn in. Mr. Meadwell?

Mr. Meadwell Background on this. Mr. Gentry came to a County meeting and reported that the track had expanded. We were directed by the commissioners to investigate. Letters were sent out August 6 and by Mrs. Groce August 9. Those are in your package along with the letters that Mr. Gentry had written. He is afforded the right to appeal to the County. He submitted his documentation that was in a timely manner and that is where we are now. If you look at what the County has determined, this is based on decisions made by others in previous years. We have tried to be consistent with rules that have been applied to the facility. Letter from Mr. Price, county Attorney at that time is in your packet. Those letters address similar issues that are going on now.

I don't want to go into a lot of that. In a procedural review by the Board, the burden of proof is on Mr. Gentry. He has to show that the County has failed in the administration of the ordinance. In reviewing this, you as the board, have the ability to approve, reverse, modify the action. You can't reverse unless you find that the administrator of previous decision had erred. It must be a 4/5 vote. In your packet you will see a list of findings. Staff would recommend that you go through each finding before making a decision on each of those. You do not have to do that. It's your prerogative, you can say the evidence is not sufficient and have a vote. There again, you can look at each one. I think you should vote on each of those issues. They are all outlined from the interpretation letters. To review the site, Ms. Litz and I went out to the site. *(shows photo of area purported to be expansion)*. There was a truck/tractor pull area. There is a grated area there. Mr. Gentry will have to show or if the board has questions of Mr. Plemmons or his attorneys. This is the area we were told this occurred. Mr. Gentry stated there were grandstands there at the time. We did not see them if they were portable. *Mr. Meadwell shows various photos and elaborates to the Board. Light poles, speakers on poles.* I would say that is typical of the site. Looking back across the site there. The RV area and exit to site. I think one of the issues that we want to show. Verified with tax department when buildings and structures were built on the site. It doesn't appear that any structures have been placed or permits applied for since 2000. I think when you look at that information as compared to letters in 2003 and 2004 have been addressed. We have found a site plan that was submitted as part of the Trident properties when they applied for the Special Use Permit for the Go Kart track. If the Board needs to see that visual reference to see what building is what. The aerials provided in the packet. The area that the track encompasses is basically the same. We really don't see there has been an expansion of the track. That is all that I have. Here again, Mr. Gentry has appealed. It is his burden to show how we erred. He must provide testimony or call on witnesses to verify. Mr. Plemmons is here tonight. If the Board has questions for Mr. Plemmons or his attorneys. I also can be cross examined. If the Board doesn't have questions of me I will turn it over to Mr. Webb.

Mr. Webb Would it be expedient for Mr. Gentry and witnesses and then Plemmons and witnesses and then questions?

Ms. Groce Cross examination after Mr. Gentry and his witnesses and then cross exam of Mr. Plemmons and witnesses.

Mr. Gentry *(already sworn in)* When do I ask someone to recuse himself? Mr. Webb, I know about some of the work done by your company and they had your signs all over the drag strip when you were running for commissioner.

Mr. Webb I was not aware of any work done there.

Mr. Gentry 2003 the work was done

Ms. Groce In order to determine there was a conflict, we would have to determine if he has financial gain.

Mr. Webb I will state for the record that my company does a lot of work in this county and others. I work in many counties. I have no way to gain anything from the drag strip. I have been there maybe 3 times, maybe 4 total. One was a Chamber of Commerce meeting in 2004. If someone else has anything that can show I have any other gain.

Mr. Gentry They didn't have my sign in their yard when I ran for commissioner.

Mr. Meadwell Have you already formed a biased opinion in this case?

Mr. Webb I have NOT formed an opinion in this case or any other case. I don't take any part of my life in consideration. I have been privileged to sit on this Board and I don't have a personal decision in this matter.

Mr. Meadwell Let the Board vote on it. To have Mr. Webb remain seated or recuse.

Mr. Jerome made a motion for Mr. Webb to remain seated. **Mr. Carter** seconded the motion. The Board voted four (4) in favor and none opposed.

Mr. Gentry Put there in 1960. Non-conforming in 1970's. Page 88 in real estate book is not indefinite. Raleigh sent me a letter. *(Submits as evidence)* The law does not favor non-conformities. Since that is a non-conforming use I think all those buildings they built over there was a mistake by the county. I would like to get the phone number off the back before I leave. In

1973 the state set out a noise ordinance in effect Oct. 25, 1973. It is a function of our local government.

Mr. Webb I think I am going to have to stop you with that.

Mr. Gentry I have a list of 8 things to bring up tonight.

Mr. Webb Noise is not one of them.

Mr. Gentry The speaker system is one of them, is that not one of them?

Mr. Meadwell Mr. Gentry writes letter to Mrs. Groce dated September 10th that states that the expansion of lighting and sound system.

Mr. Webb We are here to answer your complaint. We are not going to talk about the noise. We do want to hear about each of your points. We will talk about the expansion of lighting and sound system.

Mr. Gentry Can I bring out the noise?

Mr. Webb No sir. Tell me what they did to expand their sound system.

Mr. Gentry This is why I wanted you to recuse yourself.

Mr. Webb Well Mr. Gentry, we are here to answer your complaint. We are not going to talk about the noise, we all know it's noisy. We do want to hear everything you have to say about the specifics. They upgraded the lighting, they upgraded the sound system, I want to know what they did to upgrade those sound systems.

Mr. Gentry I don't know, you worked on the sound system you tell me Mr. Webb.

Mr. Webb The sound system and the lights are not part of the mechanical system Mr. Gentry.

Mr. Gentry Part of the electrical system.

Ms. Groce We are not here to talk about the noise, but the sound system yes.

Mr. Gentry That is creating the noise which is causing my problem.

Ms. Groce The sound system is one of the items on the list tonight. What we can't do is go beyond what is outlaid for the Board tonight. So we can certainly address the expansion of the sound.

Mr. Gentry The sound is ridiculous. I have lived there for 35 years and for 25 years I couldn't hear it. Now it's blasting in my bedroom at night I can hear it. I don't know what they've done to make it that way but now I go to my church on Sunday mornings a mile away and I can hear it. It's just much louder than it was for 25 years. So I guess that's all I need to say about that. The state says ya'll need to correct it. Let's go to Mr. Price's letter, can I bring that up? In it he says something about expansion, the buildings should not be enlarged or expanded. We all know the block building and now it's four times that size. How did that happen. *Mr. Gentry reads County Ordinance.* So how did it get four times bigger than it is? That is ya'lls ordinance, not mine.

Mr. Webb Tell me what size was it to start with and what size it is now.

Mr. Gentry I got pictures, you want to see the pictures?

Mr. Webb Yes sir.

Mr. Gentry Ok then.

Mr. Jerome Are you referring to the October 15 letter from Bob Price?

Mr. Gentry Yes. And the County's non-conforming ordinance. And that is where it says it, in there in the County Ordinances that is not to be extended over 10% of tax value.

Mr. Webb Correct. We agree with that. Can you tell me when this old timing tower photo was taken? Do you have any idea?

Mr. Gentry Mr. Harding does, he made it.

Mr. Webb Is Mr. Harding present?

Mr. Gentry Yes he is. I made the other one around 2000 when all of the expansion was going on. Back to Mr. Price's letter. He says the expansion and stuff the general rule to increase the volume and intensity but the county is concerned with hours and days and the expansion of hours. If you go on the back page of it and it talks about the camping. The County is particularly concerned with overnight camping that would not be a permitted use. Your County Attorney wrote this letter. Pat Sawyers and Gordon Sheridon and they are both here tonight. I already talked about the zoning codes. They shouldn't be able to do what they have done over there. Let's just get to the letters that I have received. I wrote Mrs. Groce a letter. My main concern was the speakers and overnight camping. Which Mr. Price and Mrs. Groce concurred that that is not a permitted use over there. And in my letter I said I can't sleep in the day because they have permission to race from 8 o'clock in the morning to 11:30 at night. I thought it was 12 o'clock for

a long time and I finally got a gentleman's agreement that it is 11:30pm. But in my letter I said that I can't sleep when they shut down their cars because they have campers over there with generators humming and it's coming in my windows because of camping over there so when do I sleep? These people think it's funny, they don't live next to it. They need to live next to it. They don't know what I put up with, I have been living with it for about 15 years now. It's not funny. They go home to their nice quiet neighborhoods and they can't hear it. They can't do this stuff. They are driving me out of my home. So what am I to do? That's up to you. Something needs to be done.

Mr. Webb Mr. Gentry, can you tell us anymore about the facts of why we are here?

Mr. Gentry Can I continue? Mr. Price come out to my house one day with Mr. Bralley came out and at that time he made statement that he did not believe that concerts and all this stuff that they do over there would not be a permitted use. But he has since left. There used to be regular telephone poles with lights. Now they have raised them up and put stadium lights over there. I know when they have new buildings done in this county they have to jump through hoops, there have to be set backs, certain kind of lighting and all this. Non-conforming cannot do whatever they want. They put all these lights up that shine in my bedroom window every night and when they decide to turn them off that is when they turn them off. They could care less about me and my sleeping habits. They have left them on all night. When they had that last truck pull, they finished the truck pull at 11:30 or quarter til 12 and turned off the lights at 1:30am. All this would not be necessary if I had a considerate neighbor. The building of the tractor pull arena, non-conforming, they were not supposed to expand. They used to do tractor pulls, I will admit to that but they did them up at the front of the dragstrip where they had their staging lanes but since they asphalted it they don't do them up there anymore. Then they went there and they leveled off that hill and said it wasn't a permanent change. When are they going to put the dirt back? They've moved the bleachers since. The gentlemen's agreement, you can throw that out the window. When it was made it was pretty much leaning their way anyway. When you have a business that goes to Surry County to get a permit to sell beer in Davie County they are not going to live up to a gentleman's agreement, you can throw that out the window. And then the RV camping, your lawyer has already said it is not a campsite. I didn't say it, your lawyers said it. Both of your lawyers said it. Regulating the hours of operation, you can do it. Mr. Meadwell just told me last week the Board, the County can regulate the days and hours they operate that place over there. Our community needs a break. It's just that simple. The last thing fellas, in controlling the noise, I need a break. I have asked for seven years for them to turn that speaker down. Seven years I have been asking different managements over there to help me with the speakers and they are louder now than they have ever been. I do have pictures of this. Let me see if I can't just correct one thing. When is the last time we had expansion over there?

Mr. Meadwell 2000 is what the tax department has.

Mr. Gentry Here is a permit in 2001 for electrical. 2003 with Mr. Webb on it. I just need some help. Whatever you would like to ask me, I would be glad to answer it.

Mrs. Frye I want to see a copy of the permits and see if they are in our packet.

Mr. Gentry Do I get them back, do I get them back?

Mr. Meadwell No, if you submit them into evidence.

Mr. Gentry Do I get a copy? I need a copy.

Mr. Gentry Do I get them back?

Mr. Gentry shows his permit packet to the Board

Mrs. Frye I think they are in our packet

Mrs. Frye and Mr. Webb discuss packet with Mr. Gentry

Ms. Groce Are there any other pictures?

Mr. Gentry I have plenty of pictures but I want them back. None to submit.

Mr. Webb Anyone have any questions of Mr. Gentry? Anyone else you would like to call?

Mr. Jerome Where do you live?

Mr. Gentry 1/2 mile west. First house after you pass the dragstrip.

Mr. Jerome How long there?

Mr. Gentry 35 years. Current management has been there 4 or 5 years.

Patricia Sawyer 841 Cedar Creek Rd, Mocksville sworn in

Mrs. Sawyer I just have some of the documentation that Jesse was talking about. Lots of pictures that are dated. We took photos every weekend. It wasn't just an occasional fluke, it is every weekend. I also have a presentation for Terry Bralley back when we were dealing with this issue in 2004 as the Concerned Citizens for the Future of Farmington. We submitted the before and after pictures. The improvements are well beyond the 10% of tax value. I have nothing else new but when they ran rocket cars it sounded like we were under attack.

Mr. Webb Anyone have questions of Mrs. Sawyer. Please tell us where you live.

Mrs. Sawyer 3/4 of a mile east as the crow flies.

Mr. Webb Anyone else Mr. Gentry?

Mr. Gentry 1976 the tower was like that.

Mr. Webb Mr. Powell?

Mr. Powell *sworn in at previous meeting* No questions.

Mr. Meadwell I think that the Board needs to pay close attention to Bob's responses to these allegations. The generalizations by Mr. Gentry are general. He is correct that Bob does mention the camping issue. If permit hookups were not provided it would not be permanent. The issue is overnight camping associated with the track as long as it is not permanent.

Mr. Webb (to board) If you haven't read those letters, you need to reread them. Mr. Powell.

Mr. Powell Mr. McClamrock will speak first.

Grady McClamrock Jr. is sworn in

Mr. McClamrock I represent Mr. Plemmons. Track started out with a concrete shute and cinder track later concrete track long before Davie County decided we didn't need a nudist colony. Track has been alive and well for many years. There have been a lot of improvements made before and after zoning. What has happened, the majority is zoned Highway Business and he can build whatever he wants out there. The county approved it and it was done. 2001 another metal building. We don't know of any substantial improvements out there. Thanks to some neighbors you have been invited out there various times. They have not been found to have any violations and I am proud to be here. I think this may be a little late. There is a letter by Mr. William Whaley and that there were no violations. He has waived his right and it is too late tonight to appeal. The one thing that seems to be a sore point is the uses of the drag way. Non-conforming means it doesn't comply with zoning but he is entitled to meet building, safety, etc codes. He must meet all current codes and he has done that. The use of a property is allowed to be used with what is consistent with a motor sports park. It can and has been used for truck racing, mud pits, car shows, motorcycle rallies, model cars, Chamber of Commerce business. etc off and on for 50 years. He can use his property in that way. The sore point is the lights and sound. There is no ordinance for that and it is not appropriate for this board tonight. There is no law preventing this. Some of the photos are friends of Mr. Plemmons dropping their cars off. We don't see any difference someone coming to the track on Friday and leaving on Sunday. It is all within the use. It is collateral use. 2 years ago with the Smoke Out with people camping in Pat Miller's bean field. That wasn't even on this track. These people coming into the track they spend a lot of money at the hotels, grocery stores, and they pay taxes. I have a letter from Comfort Inn (*submitted as exhibit 1*) saying they appreciate the full weekend. I have been to the drag strip a lot as I was growing up. There has never been any criminal activity, trash, problems with law enforcement. Andy Stokes said he has had more trouble at Wal-Mart than the Smoke Out. We don't have another site in Davie County that has the size, openness, access, security, visibility, bathrooms. We have law enforcement at each event. We take pains that it is a place people can take their kids. Another thing to consider. This man is paying about \$16,000 a year in property taxes, not counting the revenue that he brings in. I will tell you about one event at Halloween and that is Junior Dragsters, age 8-17. They sound like a lawnmower on steroids. They may get to 50-70 miles per hour. They have the whole family. 118 youngsters competing at the track. I can't tell you how many people were there supporting these youngsters. (*Photos submitted as exhibit 2*) My client has owned since 2006 and has maintained it and tried to address concerns. If you look at your map-3198 on aerial is Mr. Gentry's house, there has got to be 4 fence and tree lines. We

don't see there is anyway there are lights shining in window. I have Sandy Collins the track manager here tonight if you would like to talk to her.

Mr. Webb That is your call sir.

Mr. McClamrock Sandy come up here.

Sandy Collins is sworn in

Mr. McClamrock Mrs. Collins will you tell the Board how you control the races and sound?

Mrs. Collins 90% of our speakers don't work right now. It is pitiful. We have complaints from racers all weekend.

Mr. McClamrock Hours of operation?

Mrs. Collins We do our best to shut down at 11:30. About 4 times we went over due to rain and the latest is 12am. We had a few street cars to finish at midnight. We do everything we can.

Mr. Webb Are the speakers that are currently mounted? Do they face east or west?

Mrs. Collins Some straight down the track and others face the tower and the tower side faces other side.

Mr. Webb Is there any lighting pointing west? Wouldn't it face toward the track?

Mrs. Collins There was a Duke Power light that stayed on all night and I had an employee go and move it toward the track. There are 3 Duke lights for security that stay on all night. There were generator lights for tractor pull that were temporary along with the bleachers.

Mr. McClamrock Generator?

Mrs. Collins Mr. Gentry called me about a generator that was driving him crazy and I went down there and had it turned off about 5 minutes.

Mr. Carter How far away do you live again?

Mr. Gentry 1/2 mile

Mrs. Collins It was a generator not attached to an RV. It was charging a car.

Mr. Webb What about the tractor pull?

Mrs. Collins You can't hear those. They are very quiet.

Mr. Jerome What time on Sunday?

Mrs. Collins No cars crank before 12noon on Sunday and stop at 7pm.

Mr. McClamrock How deep was that cut off the ground?

Mrs. Collins I don't know.

Mr. Plemmons (from audience) 3 inches

Mr. Jerome Where was the tractor pull?

Mrs. Collins Other side.

Mr. McClamrock Hill for tractor pull?

Mrs. Collins There never was a hill there, it was just smoothed out.

Mr. Webb Anyone have questions for Mrs. Collins. *none*

Mr. McClamrock I met this little girl named Becky White when I started practicing law and she came up rough and she could write about racing and she published a racing paper herself because she loved writing about racing. She wrote a letter to the paper last week. (*submits as evidence*)

Mr. Powell I'm an attorney from Winston-Salem. Packet, I will go over them with you. All appeals to Board of Adjustment within 30 days. Here Ms. Groce wrote a letter on August 9, 2010 concerning an appeal. Mr. Gentry wrote a letter on September 10, 2010. The only things you can consider is the appeal of Ms. Groce and Mr. Gentry. The only proper matters are those appealed from the last decisions. The other letters show that there was compliance and no appeal was made after 30 days on any of those. The drag strip has been operating for 50 years. It is allowed under zoning ordinance of Davie County. They are allowed to continue. Much of the property has been zoned as Highway Business and he can put these buildings to use. All that is legal, proper and non-challengeable. There have been no requests for expansion. All uses are customary and consistent with the zoning law of Davie County. All judicial decisions have allowed that in the past for North Carolina. There have been no allegations to the contrary in the proper 30 day time period. There has been a lot of talk about the noise. Davie County has no noise ordinance and North Carolina has no statute. There is no such thing as an unlawful noise. The only place is a lawsuit across the street at the courthouse. Mr. Plemmons has done a great job. Mr. Plemmons has never used Mr. Webb as Mr. Gentry has tried to falsely accuse the Chairman of the Board. I have here another neighbor Mrs. Karen Stigall. She is a nearby neighbor.

Karen Stigall 203 Four Corners Rd. sworn in

Mrs. Stigall I live about a mile from Mr. Gentry. As far as the noise and speakers where Mr. Gentry's house is. Us and the Cruises park at the same place and the lights and speakers are turned off at 11pm. There is more noise at a Davie Football game than at the drag strip. We moved to Davie for the races and for a better school. Davie County is a good county. We all try to get along as far as Junior Dragsters. On our side the speakers go off a little before 11pm. I live a mile from Mr. Gentry. I have elderly people around us and we are considerate of them when we crank my sons Junior Dragster. If you are going to buy a house around the drag strip you will have noise.

Mr. Powell Generators running a mile down the road?

Mrs. Stigall My husband bought a Honda generator because they are so quiet.

Mr. Smith One thing in favor of Mr. Gentry those drag racers are loud back in the 50s I haven't heard them lately.

Mr. Powell Call Robert Vogler

Robert Vogler 294 Scott Rd., Lewisville sworn in

Mr. Vogler I have been going to this race track 30 years and I take my kids there. There are some good kids in this crowd that race. I am sure this man is a little bit aggravated. I can tell he is a family man because he left last month because of his mother in law. I am trying to keep this place going to keep these kids out of trouble.

Mr. Powell Mr. Chairman, members of the Board, there is a great number of people here in favor of the drag strip. *Members of audience for the drag strip are standing.* Everyone but Mr. Gentry and one other person are the only ones sitting. It is a late hour and I could call all of them, but I don't think it is necessary. We ask that we can operate lawfully and deny Mr Gentry's request.

Mr. Gentry I have never asked for that place to be shut down. I am asking for consideration for the lights and speakers to be turned down and for the hours of operation to be considerate. I don't care to know what food they have or who is racing. I can hear the speaker in my bedroom at night. I have never asked for it to be shut down but I do want some consideration. Until I am dead or in my grave I will complain about it.

Mr. Webb Please address the Board Mr Gentry.

Mr. Gentry I go to football and those are too loud. Mr. Plemmons came over to my house and worked on the speakers and it was better for a while until I got them to stop selling beer and now the speakers are louder than ever. If you don't believe the lights and speakers, come over to my house. One other thing. I would like to know where someone said I complained about someone camping on Mr. Miller's property. I never said that. I said something about the drag strip camping.

Mr. Webb Where do the Millers live?

Mr. Gentry They live on other side of road closer to the strip. My wife's family lived there and there were generations of her family we didn't just move in.

Mr. Meadwell Which light or sets of lights?

Mr. Gentry All of them. The taller lights on east and west all illuminate toward the Pat Miller field. When Mr. Plemmons took over he didn't know the lights were on all night. As far as noon on Sunday, sometimes at 7:30am on Sunday they were running cars. A few years ago when 4th of July was on Wednesday they were there for 12 days that time.

Mr. Meadwell I think we have heard some things that are of great concern to Mr. Gentry . Some of which are outside the determination of the Board. Some are modernization and within their rights. You are acting as the Enforcement Officer for the county. I don't know if it is appropriate or a willing compromise to possible ask Mr. Plemmons that the lights are shining down on the property and that issues with speaker system addressed. I say that meaning that the Board doesn't have to do anything. As I mentioned earlier, the Board could say that you find no evidence that the Enforcement Officer has erred. As Mr. McClamrock, the letters from 2003 and 2004 should have been appealed within 30 days of those letters. I don't think in good conscious it could have been applied. I just think there is room for some compromise here on some of these issues. Some of the facts cannot be changed. Some of the hours of operation Friday and Saturday nights 11:30, Sunday 12-7pm some of these could be compromised. I don't envy the decision the Board has to make tonight.

Mr. Smith Are you saying some modification?

Mr. Jerome Are you saying an extension?

Mr. Webb We are here to decide if the Zoning Enforcement Officer made the right decision and assumption in his report. Not any new decisions. Any questions of Mr. Meadwell or the attorney?

Mr. Webb Motion?

Mr. Jerome made a motion to affirm the Board's 2004 decision. **Mrs. Frye** seconded the motion. The Board voted five (5) in favor to affirm the Board's 2004 decision. (Note: JT Smith did not vote, therefore it is an automatic affirmative).

Mr. Webb Other business?

None

ADJOURNMENT

Mr. Jerome made a motion to adjourn. **Mr. Carter** seconded the motion. The Board voted five (5) in favor and none opposed to adjourn.